

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338-E for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038
Emergency Application of Pacific Gas and Electric Company (U 39 E) to Adopt a Rate Stabilization Plan.	Application 00-11-056
Petition of The Utility Reform Network for Modification of Resolution E-3527	Application 00-10-028

**ASSIGNED COMMISSIONER'S RULING ON
PACIFIC GAS AND ELECTRIC COMPANY MOTION
REQUESTING HEARINGS ON COMPUTER MODELS**

On September 10, 2001, Pacific Gas and Electric Company (PG&E) filed a "Motion to Compel Production of, and Hearings on, Computer Models Used to Support the Draft Decision (DD) of ALJ Pulsifer on the California Department of Water Resources' (DWR) Revenue Requirement" (Motion). In the alternative, PG&E moves that the Commission strike all results of DWR's computer modeling from the DD, including, but not limited to, the tables relating to cost allocation on page 34 of the DD. Because of Public Utilities Code Section 1821, *et seq.*, PG&E argues, the Commission cannot rely on the results of computer modeling to establish rates unless it ensures access to the underlying computer

models and their assumptions, and allows for cross-examination and rebuttal. More specifically, PUC Section 1822(a) provides that “[a]ny computer model that is the basis for testimony or exhibit in a hearing or proceeding before the commission shall be available to, and subject to verification by, the commission and parties to the hearing or proceedings to the extent necessary for cross-examination or rebuttal”

On September 19, 2001, an Assigned Commissioners' Ruling (ACR) was issued in response to PG&E's motion, noting that DWR had subsequently agreed to grant PG&E access to its model, subject to negotiation of a suitable nondisclosure agreement. In the ACR, parties were directed to enter into negotiations with DWR concerning the form(s) of nondisclosure agreement and the identity of the designated persons who may review said model and related inputs. Parties subsequently entered into negotiations with DWR, and a mutually agreeable nondisclosure agreement was finalized on September 25, 2001.

Now that parties have been provided access to the DWR models pursuant to the nondisclosure agreement, the remaining issue relating to PG&E's request for evidentiary hearings on the DWR model is hereby addressed.

Background

On September 4, 2001, PG&E and all other parties of record received the Draft Decision of ALJ Pulsifer (DD) in this matter as referenced above. Comments on the DD were filed on September 11, 2001. Shortly after receiving the DD, PG&E sent a data request to DWR and the Commission's Energy Division. Among other things, PG&E states that it requested the “comprehensive modeling and information” and the “summary information” as referenced in the DD that was provided by DWR to the Commission's Energy

Division to derive DWR charges for sales to the three utilities' customers. PG&E also asked whether DWR used a production simulation model to estimate the allocation of DWR costs among utilities in Table A-8 of the DD, and if so, whether DWR used the gas prices shown in Table A-7, and spot prices derived from production simulations using those fuel prices.

PG&E states that it did not receive a response from DWR, and that the Energy Division declined to provide the requested modeling information, stating either that the information was deemed confidential by DWR, or that DWR could better respond to the questions.

Earlier in this proceeding, PG&E also requested production of the computer models and related modeling and forecasting assumptions used by DWR in support of its revenue requirement, and agreed to enter into a non-disclosure agreement to protect any proprietary interest in such models. In response, the DWR refused to produce its computer model or related forecasting assumptions, and also refused to produce the computer models that it relied upon for its conclusion that its revenue requirement could fit within the existing structure of utility rates.¹ Accordingly, PG&E filed its motion for the Commission to order the Energy Division and DWR to provide PG&E with access to those models. Under Public Utilities Code (PUC) Section 1821, *et seq.*, PG&E argues that it has the right to be provided access to those models and their related results and assumptions, and to have an opportunity through formal

¹ See DWR Memorandum to CPUC, August 1, 2001, responding to IOU data requests, pp. 18, 20-25.

Commission proceedings to cross-examine and rebut the models, their assumptions and results.²

As noted above, an ACR was issued on September 19, 2001, directing parties to negotiate an acceptable nondisclosure agreement for access to the DWR models. Since that task has now been accomplished, the instant ruling disposes of the remainder of the PG&E motion relating to the request for evidentiary hearings.

Request for Hearing

PG&E moves that the Commission schedule hearings in order to provide PG&E and other parties the opportunity for cross-examination and to present rebuttal on the models and the modeling results and assumptions that are currently incorporated in the DD. PG&E argues that it would be inconsistent with the meaning of Public Utilities Code Section 1822(a) and its legislative intent for the Commission to issue a decision which relies on the results and assumptions of computer models that had been withheld from evaluation and public review. Section 1822(a) provides that [a]ny computer model that is the basis for testimony or exhibit in a hearing or proceeding before the commission shall be available to, and subject to verification by, the commission and parties to the hearing or proceedings to the extent necessary for cross-examination or rebuttal”

² Because of the short timeline associated with this phase of the proceeding, PG&E states that its motion does not provide a declaration regarding attempted informal resolution of this discovery dispute. Given DWR’s prior refusals to provide access to its computer models and related assumptions, PG&E claims that such an informal effort would be futile. *See* Rule 74.6, Commission’s Rules of Practice and Procedure.

Discussion

PG&E's request for evidentiary hearings is granted to the extent set forth below. The hearings shall be conducted on the issue of the appropriate allocation of DWR revenue requirements among utility customers in the service territories of the three major electric utilities. As a basis for testimony in these evidentiary hearings, parties shall be provided the opportunity (subject to the above-referenced nondisclosure agreements) to review and conduct discovery on the computer models and related assumptions and results relied upon by DWR and the Commission's staff in developing revenue allocations. Parties may offer testimony critiquing the allocation methodologies that have already been put forward, and/or propose alternative allocations.

In order to expedite parties' review, a technical modeling workshop shall be scheduled for 9 am on October 5, 2001. The workshop shall be moderated by the Director of the Commission's Energy Division. The workshop shall provide a forum and opportunity to gain an understanding of the DWR models and to ask questions concerning how the DWR models are used to develop DWR revenue allocations among the customers of the three utilities' service territories. In the interests of time, parties are urged to submit any questions concerning the workings of the model either to DWR or the Commission staff (depending on the nature of the question) as soon as possible, but certainly no later than the date of the October 5 workshop.

The evidentiary hearings shall be limited in scope to issues relating to the DWR revenue allocation among the customers of the three utilities. For example, other issues covered in the DD, including the justness and reasonableness of the overall DWR revenue requirement or the appropriate categories of costs to be

included in the DWR revenue requirements will not be subject to hearings. Parties have already been provided the opportunity to file comments on the DD.

Following conclusion of the evidentiary hearings scheduled in this ruling, a Proposed ALJ Decision will be issued. The Proposed ALJ Decision will incorporate, as appropriate, the relevant portions of the previously issued DD, revised as necessary to respond to comments previously filed on the DD on September 11, 2001. The Proposed Decision also will include any revisions to the DD relating to DWR revenue allocation issues deemed necessary in light of the evidentiary hearings that will be conducted.

The following schedule is hereby established for the further proceedings on the DWR revenue allocation issue:

Event	Date
Modeling Workshop (9 am)	October 5
Testimony Due	October 15
Prehearing Conference (10 am)	October 18
Evidentiary Hearings (9 am)	October 22-26
Concurrent Briefs	November 2
Proposed ALJ Decision Mailed	November 14
Comments on Proposed Decision	November 21
Commission Meeting	November 29

Under Section 311(d), the Commission shall issue its decision not sooner than 30 days following filing and service of the proposed ALJ decision, except that the 30-day period may be reduced or waived by the Commission in an unforeseen emergency situation or upon stipulation of all parties to the proceeding. In the procedural schedule shown above, the Commission would issue its decision sooner than 30 days after the filing and service of the proposed

ALJ decision. In order for the Commission to act upon the Proposed ALJ Decision on November 29, parties are hereby requested to stipulate to a reduction of the 30-day period pursuant to Section 311(d). Unless a written objection is filed by a party within 3 business days of this ruling expressly objecting to the stipulation, parties will be deemed to have stipulated to the shortening of the 30-day comment period as provided for in the schedule above.

Parties have already had an opportunity to review and comment on the previous version of the DD that was mailed on September 4, 2001. The scope of review and comment on the Proposed ALJ Decision will be limited to the issue of revenue allocation since that is the only issue being covered in evidentiary hearings. Under the circumstances, a shortening of the 30-day review and comment period as reflected in the schedule above is reasonable.

IT IS RULED that:

1. PG&E's motion requesting evidentiary hearings on the DWR computer models is granted to the extent set forth below.
2. Evidentiary hearings shall be conducted limited to the issue of the allocation DWR revenue requirements among utility customers in the service territories of PG&E, SCE, and SDG&E in accordance with the schedule established above. For purposes of the hearings, parties shall be provided the opportunity to conduct any necessary discovery related to their review of the models and their related results and assumptions.
3. A technical modeling workshop shall be scheduled for 9 am on October 5, 2001 for the purpose of providing parties an opportunity to ask questions concerning the DWR models. Parties are urged to submit any questions relating to the DWR model to either DWR or Commission staff as appropriate no later than the date of the workshop.

4. Parties are requested to stipulate to a shortening of the 30 day period for Commission action on a Proposed Decision as provided for in the above procedural schedule. Unless a written objection is filed by a party within 3 business days of this ruling expressly objecting to the stipulation, parties will be deemed to have stipulated to the shortening of the 30-day comment period as provided for in the schedule above.

5. All testimony and other pleadings shall be served on parties by e-mail no later than 5 p.m. of the designated due date in addition to any regular service or filing requirements.

6. All prehearing conferences and evidentiary hearings shall be held at the Commission's hearing rooms at 505 Van Ness Avenue, San Francisco, California.

7. This ruling shall be served on parties by e-mail.

Dated September 26, 2001, at San Francisco, California.

/s/ LORETTA M. LYNCH

Loretta M. Lynch
Assigned Commissioner

/s/ GEOFFREY F. BROWN

Geoffrey F. Brown
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioners' Ruling on Pacific Gas and Electric Company Motion Requesting Hearings on Computer Models on all parties of record in this proceeding or their attorneys of record.

Dated September 26, 2001, at San Francisco, California.

/s/ ERLINDA PULMANO
Erlinda Pulmano

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

